

**LAKE COUNTY BOARD of ADJUSTMENT**  
**March 13, 2013**  
**Lake County Courthouse Large Conference Room (Rm 317)**  
**Meeting Minutes**

**MEMBERS PRESENT:** Clarence Brazil, Sue Laverty, Mike Marchetti, Paul Grinde

**STAFF PRESENT:** Joel Nelson, Karl Smithback, Robert Costa, Lita Fonda

Mike Marchetti called the meeting to order at 4:00 pm.

Sue pointed out some corrections to the minutes. On pg. 3 in the first line of the last paragraph, 'literal' enforcement made more sense than 'little' enforcement. On pg. 7 in the second paragraph in the 4<sup>th</sup> line from the end, the duplicate 'a bigger' should be eliminated. Joel asked if the Board wanted the 4<sup>th</sup> and 3<sup>rd</sup> line from the bottom on pg. 19 eliminated, and the Board agreed.

**Motion made by Mike Marchetti, and seconded by Paul Grinde, to approve the February 13, 2013 meeting minutes. Motion carried, all in favor.**

**WINGER CONDITIONAL USE—MASUMOLA (4:03 pm)**

Robert Costa presented the staff report. (See attachments to minutes in the March 2013 meeting file for staff report.)

Hu Beaver spoke on behalf of the applicants. He thought the information had been well stated. They chose this approach for a better use of time. An extra permit was involved but it was on the time schedule.

*Public comment opened:* No comments offered. *Public comment closed.*

**Motion made by Paul Grinde, and seconded by Sue Laverty, to approve the conditional use with findings of facts and terms and conditions as stated in the analysis. Motion carried, all in favor.**

**HYLBAK VARIANCE & CONDITIONAL USE—EAST SHORE (4:12 pm)**

Karl Smithback presented the staff report. (See attachments to minutes in the March 2013 meeting file for staff report.)

Mike asked about the impervious surface calculation. It appeared to him to be in the 57 or 58 % range. Karl replied that 63 % was submitted by the agent. Karl came up with 61.8%. The 87% was strictly for getting a better context of the situation. Mike commented it was a fairly unique piece of property, as was that whole section of lakeshore. Sue asked for clarification on the 87%. Karl said if everything was approved it wouldn't be 87%. By approving the other variance for putting structures on slopes exceeding 25% and the conditional use for disturbing those slopes, you in effect make that buildable area. The 87% would be if you were looking at the property with a typical

understanding of buildable area without slopes. Mike added if you took out setbacks and such stuff. You had the highway right-of-way, the lakefront and the side setbacks.

Sue understood that they weren't going to use the existing concrete pad, and they were going to push the garage toward the highway, into the slope there. Karl noted that the garage was proposed, not existing. Sue confirmed with Karl that the existing concrete pad wasn't going to be used. Karl noted he had conditions addressing that. Sue referred to attachment #6 regarding the slab. She checked that there were 3 flat benches on the property: the cement slab, a larger bench by it, and a third one within the buffer. Where was the house proposed to be? Karl indicated its location on a photograph. He described it as being on the slope between two of the benches. Sue affirmed with Karl that part of the excavating was into that slope area to put the structure. Karl said some of the slopes would obviously have to be disturbed to reach some of the building sites. Sue thought some already looked disturbed. Rob Smith, engineer for the project, said that an excavator dug test holes on Monday. Mike asked if Karl proposed they move the house east onto the second bench area where the rock wall was or the driveway-garage area. Karl clarified that he wasn't proposing something. Rather than saying there were other options, it seemed like you could put [inaudible] on that level area. It would require the elimination of the garage. You might be able to get by with the conditional use for the disturbance of slopes rather than the two variances, which seemed to take away two criteria.

Gary Hylbak spoke on behalf of his and his wife's application. They bought the property in March 2008 and intended to retire there. At the time of purchase, the existing benches were already there. The realtor told them a Quonset hut used to be where the concrete slab was. On the second bench area, the realtor said that was the building envelope. They assumed since someone took the time to take out the trees and bench this area and create the situation for a buyer, that this would work for them.

Rob Smith of A2Z Engineering spoke as the agent for the project. He showed exhibits that he brought, including a property plan. He mentioned that Lyndon Steinmetz, the house designer, was also here tonight and could talk about different things that they've tried. This was a challenging 75-foot wide lot, with a 10-foot setback on each side, with an average slope of 28%. The previous owner applied to do work on the lot, and installed the terracing. To an engineer, there were not walls, but stacks of rocks piled against stacks of dirt. Some were leaning. They weren't engineered walls. Regarding the planning report, some of the earlier versions showed more bedrooms. They discussed the sand mound system that's there and some of the conditions on-site with the Sanitation Dept, who expressed a clear interest that they work with the 2-bedroom sand mound that they had. They were currently investigating whether it was possible to expand the system with some sort of advance treatment. The current plans showed no water system or septic system connections to the garage structure. The attic would simply be storage. The house would be a retirement residence. The 2-bedroom structure with the existing sand mound would be a reasonable use.

Rob said the next issue was whether this structure was consistent with the character and nature of the area. He showed and talked about a 'Comparison Exhibit' (see attachments to minutes in the March 2013 meeting file for handout). You had two kinds of structures in the area. There were historic summer cabins built from the '40's to the '60's, which were generally 1000 square feet or less, usually seasonal and not lived in year-round unless they'd been improved. Many of the lots along the Many Springs corridor fit that description. He indicated structures built in the last 10 years. Prices of lakefront lots changed a lot in the last 20 years. They were becoming more of a year-round residential type of construction. The square footage of proposals were like those of the last 3 houses built in that area.

He spoke about the fire protection access and slope stability on the lot, and took responsibility for missing getting that information in. They would talk to the fire chief about how fire protection would be handled. On other projects on the East Shore, he'd been told that generally the fire departments fought structure fires from the road. They would park up there and bring the water down the hill. Emergency vehicles like ambulance would be able to access property when a new driveway was built. He visited the highway department this morning and picked up the permit for the driveway. He showed the plan for the proposed driveway improvement, which also showed the existing driveway. He proposed a regraded driveway, retaining wall on the right-of-way that would allow the pad to be built up a little and widened to the point where it would meet the car turning radius. The highway dept had reservations, so he visited the site with them and met with James Freyholtz, the district traffic engineer. He also spoke with the administrator in Kalispell. They finally agreed that this was the best fix for the driveway. They were confident it could be built without disturbing the neighbor's property.

Regarding slope stability, Rob said the excavator had been there and dug holes in different spots. The bad news for expanding the septic system and the good news for slope stability was they couldn't get test holes down very deep. They hit bedrock at 1 foot and at 3 feet, and in the third hole they hit a clay rock layer that the excavator couldn't get through, rather than bedrock. As an engineer, he was confident that if anything, they would have trouble getting the excavation out of the hillside for the daylight basement home on the property. There were some hard layers to anchor into.

Rob said that he didn't intend for the erosion control plan to be optional on a lakefront lot. Erosion control was essential. They planned to design it to be flexible, which may have been confusing. When a contractor showed up and saw conditions he wasn't expecting, he had the flexibility to modify the plan to install silt fencing or tracking pads or other things that were necessary. That was an approach that Dept of Environmental Quality (DEQ) was pushing on engineers. That was why the erosion control plan might seem off. They had no reservations about making the plan mandatory as stated.

Rob addressed the impervious surface coverage and how it was calculated on buildable area. If you wanted to develop a big buildable area, it was difficult on a long, narrow lot. The setbacks really cut the amount of lot area down. You sited the house and garage, which covered about 23% of the lot. You established the setback lines. Then you were

in the high 40's for percentage coverage. Then you chiseled out where the slope was over 25%, and that moved you toward the 63%. There was no perfect way to calculate buildable area and set a percentage. Every lot was different. The zoning regulations did what they could to figure out a good system for this. There were shortfalls, and the shape of the lot was really fighting them.

Rob addressed doing something different, as suggested by the Planning Dept. He tried moving the house and erasing the garage, and sliding the house up inside the setback lines. He explained the two grey shades he used to indicate over 25% slope, with darker grey indicating 40% slope. The difficulties they ran into with this structure and the available building area were the vehicles. They tried to move a 24 x 24 double garage into a spot in this structure, but then you didn't have a place to turn your car around and would have to back onto the highway. You'd have to build retaining walls in some fashion and take out the 40% slope somewhere in order to build a turn-around area to get back out of the lot. The other shortcoming of that idea was that this driveway was already 16 to 18%. If you built a flat area in there, you shortened that up and made it no less steep. He offered to take questions.

Mike noted that he worked on the East Shore Zoning code. He had a really good understanding of the intent when they wrote that. They were thinking about slightly bigger properties when they thought about the impervious surface and the total area coverage. A half-acre wasn't typical for that area. He didn't have a problem granting a variance for increasing the coverage. He had a big problem with 25% slope or greater that close to the lake. This invited problems. They had a lot of ground runoff there. From the diagrams, it looked like they would be building on top of where some of the water flow goes. As an engineer, he knew they could work around that. His first concern was to protect the lake, because that was why they lived here. They were building close on a very steep piece of property which put his concerns way up. He would turn towards what the planners had to say on those kinds of things unless they could find a way around it. Pushing the house back was an idea. He was just stating his concerns, and asked the rest of the Board to speak up on other concerns that they would like the applicants to address.

Sue was concerned about that as well. The lot was narrow and very wet. It had some great vegetation already there that helped filter the runoff. She had a problem with doing that amount of excavating and building and covering that usable area of the lot. She mentioned pushing the house back, scaling it down, and some plans originally showed some sort of living space over which could be incorporated into a smaller structure that had living space above a garage. They could still have a turnaround. She thought there were a lot of options. There was a lack of actual hard data that the Planning staff had requested, and that was a problem for her. She liked to see it presented with the information that the staff needed to make a better determination, and not have to request that after. They stated they currently had septic for a 2-bedroom structure. That probably couldn't be changed and that information wasn't in the packet. It lacked information for her to make a better judgment.

Clarence agreed with Mike and Sue. It looked iffy.

Rob replied to Paul's query that the septic system was installed as a replacement for an old structure that was on the pad. Paul asked if this was what was shown underneath the covered stairwell. Rob said it probably couldn't be moved. It hadn't yet been turned down by the Board of Health. Sue asked if they had the covered staircase over that, could the structure be built to cantilever over that, so there was no daylight basement. That could be done without much excavating. Karl identified that as an Environmental Health question. Mike asked what the setback from septic was. Joel thought it was 10 feet from foundations. He wasn't sure what the setback was for a structure that was cantilevered. Mike said if the applicants were to agree to push the house back onto the pad where the driveway was, he thought they'd be over the top of the septic also.

Karl noted the architect mentioned one of the earlier plans had the house up on the level area and they did manage to incorporate a garage underneath and comply with the setback. Rob said in a meeting with Karl and the sanitation department, they asked about the covered stairway, and they were okay with it. He referred to Karl's mention of moving the house up. They asked about building a cantilever over, maybe hanging decks over the septic, and the head of Environmental Health wasn't happy with that. It wasn't a good idea. Mike said moving a sand mound was pretty expensive. Rob said the question from his side to consider was whether building between the lake and the sand mound was an unbearable thought or would a smaller structure be more appropriate. He wanted to gauge if there was flexibility on that point.

Mike thought a smaller structure would be better. You could push it away from the lake because you were on that greater than 25% slope. That would make it more palatable. They were sitting on a pretty steep terrain that had a lot of groundwater flowing through it. How did they mitigate that? Sue said it was hard to say the 'what if's', like what if this was something smaller. There might be less coverage of the lot and less tearing up of the lot to build it. That was possible but without information it was hard to make that kind of a judgment. It would be more palatable for her. You could visually walk it and see that the lot was limiting. It was challenging and took a unique person to deal with its limitations. For a large house, perhaps it wasn't an appropriate property. Maybe something more in keeping with the size of the lot and the surrounding area, and incorporating some of the uniqueness of that lot would be what she saw.

Clarence was curious with that much water, how could it be contained without getting some of it into the lake. Karl said it couldn't go into the neighbor's lot. Joel said this was groundwater that occurred on the property. It was different than stormwater. Mike noticed they had collection facilities for the stormwater being shed from the house. That was typical.

Gary Hylbak asked if the Board noticed the extensive drainage for underneath the house. His understanding was the surface water would be away from the home, directed to the sides and so on. He mentioned a creek between the two properties. The water underneath it was redirected to the side. He referred to the hard material in the test hole.

That indicated to him that the house wouldn't go anywhere. The combination of the proper drainage under the house and around the sides in concert with this hard soil led him to believe it wouldn't be as big of an issue. Karl pointed out they didn't want it to go to the neighbors' property. Karl checked they'd said it might be 1 to 3 feet to the bedrock or hard clay. Rob said the foot-deep one was [inaudible] on the concrete pad back towards the highway. There was already a cut bank there. It was actually about 4 feet deep because of the cut bank. Karl expressed concern that where they had the stormwater infiltration infrastructure, which was really supposed to deal with that off of the roofs. Would they be able to fit between surface and bedrock? Rob believed so. If the Board was uncomfortable because enough information wasn't submitted, and [inaudible] issue, they would certainly agree to table to submit more information. Mike said that was an option. He really didn't want to say no but he had to find a way to say yes. That would mean a little more information for them to be comfortable with this.

*Public comment opened:*

Michael Clarkson: He said he went through the same process 30 years ago when someone else bought the property and thought to build a huge house on it. His wife handed out pictures, and he spoke about them. (See attachments to minutes in the March 2013 meeting file for staff report.) [His family] apparently had the only palatable spring water for drinking in the area. Without telling them, the builders for the Weidmans tapped into their cistern. With the next picture, he talked about the road access to the slab. He pointed out a building on the slab, which was no longer there. The road was built up and the picture showed his father up to his calves in muck because the water was sent to the side to his property and no one contested it. The Weidmans ran out of room for their sewer permit and no one contested it so they built their drainfield on the family property. Eventually this got as far as the County Commissioners, and his attorney filed a writ of [inaudible] against the County. They were successful and the County repaired the family property. He was frequently at the property, and his brother was the current property manager. The sizes of the property were different. In the notice, it talked about a little over ½ acre. In the listing from the real estate agent, it was listed as a little under ½ acre. (See attachments to minutes in the March 2013 meeting file for handout.) He was curious how the property gained 2,200 square feet. He shared an email from the Gibsons, other neighbors, who learned about this meeting over the weekend. (See attachments to minutes in the March 2013 meeting file for staff report.) They were traveling. They sent him the email that explained why they built this fence. Apparently Gary Hylbak at one time said he was planning to use their driveway to get the excavated driveway out, and the Gibsons said no. If this were tabled, Mr. Gibson would come and speak in person. The Gibsons asked him to show the email and the picture.

Mike M: He noted materials were presented outside the normal course, and asked if the Board would accept these into record.

Sue L: She thought they were part of the public comment. They weren't being asked to make a judgment on them, just to accept them as part of public comment.

John C Clarkson: He was the manager of the Clarkson Family Partnership, which owned the property to the south of the subject property. He drafted the public comment, which he thought was attached to the staff report. He raised some points that they wanted to make. Karl made a good summation. They were looking the requested variance. They specifically noted the last 3 and wanted to draw attention to them. He was encouraged by what he'd heard here today. He heard very good comments. He commended the due diligence of the County on that and the exceptional work of the Planning staff. He was glad to hear the engineer's [inaudible] good ideas because they would like to see areas such as this be buildable but it did boil down to what could be done to correctly fit this area and not damage either neighboring properties, the lake or [inaudible]. He pointed to the final paragraph in his public comment. They looked forward to the work that everyone was doing and were confident that eventually a suitable structure would be built.

*Public comment closed.*

Mike returned to the Board for additional questions they might have for the owners or agents. The Board had said they were okay with tabling. What would be the time limit if the Board tabled this and requested additional information? Joel said it depended on what the applicant or agent agreed to. He suggested talking to the applicant about it.

Mike reiterated that additional information was requested, and getting a better feel for finding a solution around this. He agreed with the comments here. They wanted to do something that was right for both the community and the applicants. He thought they needed an alternative. Sue said they could deny the variances and they could come back with something the Board could work with. Mike thought it was harder to deny and come back in. Karl said it had the same effect. Mike said if they reapplied, they had to go back through Lake County Leader to follow the rules correctly. If they tabled it, they could just come back. Joel added they would have to announce when they were coming back. Otherwise they would have to notice it again. Rob said they preferred tabling, from the side of paying fees and things like that.

Mike looked to the Board for wisdom. Paul agreed with Mike. He had a hard time wanting to turn this down. Mike rephrased that he was looking for a way to approve this. Paul continued that with the existing septic system, they didn't know if it could or could not be moved. It seemed it was an option in creating a more reasonable structure and use of the property. Sue agreed with the Planning report in that they weren't limiting the use of the property. They still had use for the property, maybe not in this particular package. She wasn't looking to approve this package as it was. If they tabled it, she thought it would either need to be redone or her opinion would likely be the same. She couldn't speak to that, since she didn't have another package with more information and another staff report to go from. Joel said it was kind of appropriate to require the fees again because they would have to rewrite a staff report. It wasn't the Board's role to approve of every project as presented or as conditioned. Sue said if they came back with an entirely new package, it would take almost the entire time for the staff anyway.

Mike said right now if they moved forward with a vote, he would vote to approve the conditional use as stated by Planning staff. On variance #2 on the coverage, he would probably find a way, with conditions from the report on building that much area and they would have to make findings. He would still vote to decline variance #1 because of the slopes. That was where he sat with the plan today.

Clarence said they were talking about the width of the lot. The report said the applicants spoke with the Planning Dept prior to purchasing the property. He read from the report. He summarized that they knew the size of the lot and the problems beforehand. Mike said it was stated very clearly in the document.

Sue Hylbak addressed Clarence's comment. They did not talk to the Planning Commission prior to the purchase of the property. She thought that needed to be stricken. Joel checked that no one spoke to LaDana Hintz. Sue H said no. Joel asked if they were aware of zoning. Sue H replied that they were aware of the regulations at the time of the purchase. They were given regulations to look through. She thought the regulations changed since then. Mike asked when the property was purchased. Sue H answered March of 2008. Joel, Sue H and Mike agreed that the zoning changed since then.

Lyndon Steinmetz, the architect, spoke about the design and lot. It was a particularly unique lot with the benches that it had. They explored the upper bench area. If they consumed that area, they would destroy the ability of emergency crews to get on it, so they came up with a split structure. He referred to one of Rob Smith's exhibits. Once they got to the bottom of the driveway, they could make the house smaller and have a more modest house. He calculated that the area in white, under 25% slope, came to about 3028 square feet within the side-to-side setback and from the toe of this slope. The toe had been cut. It was an artificial slope although considered the natural grade for these purposes. They had quite a bit of area over 25% where they sited the house. He sited the house as close as he could to the bottom of the 2<sup>nd</sup> bench. They weren't technically building in that area but it would be leveled to create the entry to the front of the house. He showed locations on Rob's exhibit. They were building into the slope, not on the slope, and consuming a little bit of the grade. The property wasn't a uniform slope straight across. It actually angled out.

Lyndon confirmed with Sue H that an old driveway came down the side. She thought that was what they did to access the benches. Someone noted that was on the Gibson's side. Lyndon said they were trying to take that into consideration, but they were constrained by the drainfield. The sanitarian comment was they couldn't preclude them from using that 2-bedroom sanitation approval. Because of the proximity and locations of the spring box, and the groundwater, they said they wouldn't approve this again at this time. It would be doubtful but possible that they could move it under a replacement if a replacement was sought. That was trying to open up the upper section of the lot to development. Not knowing whether or not they could do that was a concern, so they wanted to go with the house down in this location. When you looked at putting even a modest house on the upper bench, you wouldn't have much area to maneuver. The



driveway steepness in the winter might put a car through the house if it were slick. He thought some maneuverability was important and that was why they selected the center bench.

Lyndon agreed that this was one of the toughest lots he'd come across in 30 years of designing homes, with the water issues, steepness, varying benches and septic field location. They could make the house a little smaller. He didn't think the top bench was the answer to the house, from a safety standpoint. He indicated where they proposed to come in. Once the house was in there and it was regraded, it would have a very natural slope. He talked about how he portrayed the project on paper. He thought building into the slope and replacing some of the slope material with a void space might help lessen the likelihood of damage to the lake. This was a wet area. It was unstable and that could slip and slide. By removing it, that potential went away and you had the house replacing the heavy, wet soil that could slide down the hill in the future. The house would weigh less than that material. He appreciated people's concerns. They'd tried a number of different schemes for the house. He recalled Karl's comment that maybe they should talk with the neighbors and buy another lot or buy space where they could put a drainfield off-site. He didn't think that was practical. He wanted to make this lot work. The question had come up if the lot had been legally created lot through subdivision review. He relayed that Karl said it was a deed exhibit that was attached. Joel noted it wouldn't have been illegal.

Lyndon said he had a client who was truly interested in this lot and they wanted to do something that was right for the lot. He encouraged tabling this, and letting them come back with more information and a slightly different package, a little bit smaller footprint and see if they could make this work. He mentioned the water on the lot that ran downhill into the lake. They didn't know where that came from. The spring came down, disappeared and then reappeared somewhere. Eventually it trickled down toward the lake on the south side. They wanted to stabilize the lot and put in a nice house for his clients to retire in. They wanted to be sensitive to the lake, because that was their lifeblood. He mentioned some previous locations they tried for the house. He was hesitant to move it from the current location. He mentioned turnaround requirements from other jurisdictions. He was looking at parking maneuverability and transition over the drainfield to a stand-alone house. They were on some of that 25% slope, which they would take out. He understood the issues with building on 25%.

Karl thought it was important to remind the Board that no matter how much they said that the building wouldn't slide into the lake, that might not do anything to meet the variance criteria. Additionally, he thought they had to be careful about saying that putting a house on the slope would be good by taking away slopes that would fall into the lake because by that logic, they should pave the entire lakeshore. For emergency services, the current plan would be that they carry someone up a stairway and up to the driveway and out. Lyndon said carrying someone up the stairway was a little bit less direct. You were talking 21 steps versus 150 feet.

Clarence asked if they had determined how deep it was from a footing foundation to a hard surface for the proposal to put the house into the hillside. Lyndon described that

where the natural grade sloped off, they would be at least 3 feet below the natural grade along the side of the house. The way the lot sloped off, when they got to the basement level, they had a fairly high basement ceiling because of the drop-off. On the downhill side of the house, they would have a least an 8-foot concrete wall that would go down below the basement level in order to get well below that. Clarence asked if it got to a hard surface and Lyndon affirmed. They would dig into the bedrock if they had to, to key that footing in. Clarence asked if they would put in pilings if necessary. Lyndon replied they would even sink down helical piers if it was necessary to stabilize.

Mike asked how much time would be needed if the Board tabled this. Would the next meeting on the second Wednesday in April be sufficient? Joel asked when staff could have the information. Lyndon said he'd get his information to Rob for [inaudible] and the owners. He would work through the owners to get something they were comfortable with. Sue L thought two month would be more reasonable if it were postponed. Staff needed time to review it and it depended upon what their docket was now. Rob didn't anticipate taking more than a week to get in the information. Lyndon thought it might take a little longer on his end. He was contemplating looking at the design of the structure itself. It was more than just a site plan. Mike asked how much time they needed. Joel said assuming that the date would be announced for the next meeting at which it would be heard so it would not need to be noticed, the planners would need it sometime next week at the latest. Mike checked that this meant the planners would want the package and updates by Friday of next week. Sue asked if they resubmitted an entire package and basically started over, would there be a reduction in fees. That would give them time to get their package together, notice it and have it reviewed by the planners. Joel said it depended on what was approved today. If the Board approved the conditional use, they wouldn't have to pay for that again, although it would potentially be a different conditional use if they were disturbing different slopes than what they were proposing to disturb now. Sue said they could table it or just deny it. Joel said they could deny the whole thing because of the uncertainties in what the conditional use was for. Robert said it would be re-reviewed, in essence.

Clarence said he hated to see [the applicants] pay to start over. Joel said [staff] would have to go through the whole thing again, and write up a staff report and do notice. Sue checked that notice would have to be done if it were postponed. Joel said it was kind of tough if it was postponed, because staff didn't know what they'd be reviewing. To be properly done, it might need to be noticed. They've tabled things in the past where they announced a certain date for the same project to be heard again. Then they could not do the re-noticing. It got complicated when that happened. Paul asked what happened if they announced it would be heard again in two months. Joel said it would be the same thing with more time to submit. Joel affirmed for Sue that the notice would be at the applicants' expense. Someone said if there was a fee, there was a fee. Sue checked that if there were substantial changes to the packet, it had to be noticed. Joel affirmed. He wouldn't feel comfortable that an announcement at this meeting was adequate if there were substantial changes. He'd want the neighbors to be aware of what they were doing. Paul and Sue agreed that it had to be noticed.

Mike said the tone of what they were trying to do was they were trying to come to a point of having the minimum required disturbance of those two rules as they were doing the two variances in question. Karl said they had to satisfy the variance criteria. Mike understood. He thought they would not get to a point where they didn't disturb slopes and they weren't going to be above the 49%. He thought that was a given, and the Board would have to make an informed decision on that. Right now they didn't have the information to make an informed decision. Karl reiterated that they had to address the criteria; that would be the big obstacle. He thought it was interesting that Mike had an easier time with the 49% as opposed to the disturbance of 25% slopes. Karl saw it the other way around. He saw the slopes as being a hardship of the lot, whereas the size was created by the owners. Sue agreed that was more subjective.

Karl thought they were getting bogged down in things like helical piers and redirecting the water. That didn't change the fact that it was 63% lot coverage on a 28% lot with water all over it. Lyndon asked if those weren't directly related. He recalled that Mike mentioned that when they were doing the East Shore zoning rules, they looked at it as much larger properties. Didn't one directly influence the other? The more of the property that was 25% slope, the smaller that number got. So the 25% slope and the exclusion of things above that was causing this high number of lot coverage relative to the buildable area. They followed one another. Karl said the slopes were existing. Lyndon said they had all-gravel driveways, and 3150 square feet of decks, house, walkway and garage. Karl said it was at 5000. Lyndon disagreed. He gave the number to Karl at a meeting. Karl said plans were resubmitted several times. The number proposed was 5324 square feet of impervious surface coverage. That included stacks, stairway, garage, and roof. Lyndon asked if a deck with open slats was considered impervious surface, and if it was over a grade. Joel replied yes to both.

Mike returned to whether the Board would table this or act on this. He felt that tabling it gave the applicants an opportunity to come back with the requested additional information and more time to answer the staff report and the variance problems. It gave the architect a chance to try to minimize the slope disturbances or whatever and to maybe draw the structure down a bit and get closer to the numbers that the Board was looking for. Sue added they could possibly give a more accurate and final proposal, since they said multiple plans had been presented. Joel noted that a denial would give them the same opportunities. It wasn't that they would deny it and would never consider it again. They could resubmit an application that staff would notice. Karl commented it would be cleaner, procedurally. Mike remarked they were treading new ground. Sue expressed a preference to go that route. Joel said it got really messy, administratively when they submitted an application, then supplemented it. It was already confusing, if you looked at the package. Sue said a problem happened before where the Board looked at and approved one package, and another building appeared because of misunderstanding from prior plans. She suggested they make a decision on this package as it was.

**Motion made by Sue Laverty, and seconded by Paul Grinde, to vote on the package as it stood. Motion carried, 3 in favor (Clarence Brazil, Sue Laverty, Paul Grinde) and one opposed (Mike Marchetti).**

Mike summarized that they would vote on this package. Joel reviewed that the staff recommended approval of the conditional use and denial of the two variances. He referred to a finding on pg. 31 in d. Referring to the last paragraph on the page, the applicants were saying they hadn't spoken with staff. The critical thing was that they knew there was zoning in place. It could be modified to say they were aware, and since they were aware.... Mike said they could remove the 1st sentence and modify the 2nd. Joel noted the Board talked about denying the variances for now and that things could change. They could approve the conditional use with a caveat that if things substantially changed, the conditional use would need to be re-reviewed. Sue liked that. Mike clarified that the first two sentences would be removed from the last paragraph on pg. 31.

Mike said the recommendations before the Board were to approve the conditional use and deny the two variance requests, and a comment that if they approve the conditional use, to add a caveat or statement attached to that to require the conditional use to be resubmitted and reapproved if substantial changes to the plans were submitted. Sue checked if there were conditions attached to the conditional use request. Joel referred to pg. 26. Sue asked if they should go through them one by one to see how they should be modified. Joel said it would basically #6 and #7. For the rest, they hadn't approved the project as a whole yet. Sue checked if they should add a condition or if they should modify #6, to add something about if substantial changes to the current plans were submitted to the Planning Dept. Mike preferred adding a separate recommendation. Mike suggested 'given approval of the conditional use permit, if the subsequent variance requests require substantial changes to the plan...' Sue said it was just 'should substantial changes to the plan...' Maybe they could make the plan work and not require a variance. They would still want to look that over to make sure it was approved by staff. Karl said the last sentence of condition #8 might give them a place to start: Further modification shall require additional approvals from Lake County. They could say further modifications to the proposal.... Karl thought that would cover it regardless of what happened. Sue and Mike agreed.

**Motion made by Sue Laverty, and seconded by Paul Grinde, to approve the conditional use request along with the related findings of fact and the recommended conditions for approval of that as modified by the Board. Motion carried, 3 in favor (Clarence Brazil, Sue Laverty, Paul Grinde) and one abstention (Mike Marchetti).**

Sue clarified with Mike that her motion didn't cover the variances as opposed to covering the entire package with the variances requested to be denied. Karl checked if Mike wanted to change his abstention in that case. Mike said no.

**Motion made by Sue Laverty, and seconded by Clarence Brazil, to deny the two variance requests along with staff's findings of fact, and including the change on pg. 31 discussed with reference to the applicants speaking with the Planning Dept—they were aware of the zoning and did not speak to the Planning Dept. Motion failed with 2 in favor (Clarence Brazil, Sue Laverty) and two abstentions. (Mike Marchetti, Paul Grinde).**

Joel checked for other motions. Sue asked Paul if there were another motion that would help him out. She asked what happened if there weren't 3 to approve. Joel read that if a concurring vote of 3 members of the Board is not achieved for any reason, the request shall be deemed denied unless the Board takes formal action to table the matter or postpone consideration of the matter to a future meeting. He noted they would not have made findings. It was in state law that it took three concurring votes of the Board to reverse an order or to decide in favor of the applicant or to affect a variance to a resolution. To approve a variance, 3 of them needed to approve it. Mike said they weren't approving the variances but they weren't denying them either. Joel explained that the rules said it was deemed denied if you didn't have the three members, but they weren't making findings. Sue summarized that it was denied without findings. Joel added unless they postponed or tabled it. Mike said they already voted not to table it. Going back to the rule of order, the variance requests were denied. Sue asked if there was a problem with no findings of fact attached to that. Joel thought it was justified in that nobody could agree on findings to support approval after consideration of the draft findings.

Paul said you didn't buy a lot like that and not be able to build a nice place on it. Sue said beauty was in the eye of the beholder. Paul said he had a lot of faith in engineering to build a structure on anything. That was where he was at. There was a lot of empty property on that lot. It was just steep. He didn't want to say arbitrarily but that it was just over 25% so it was too steep to build, but it was certainly possible. Mike said they had kind of the same issue last month where they had a property that was quite unique and they had to work around it. They came up with a solution. It wasn't unanimous but they did come up with a solution. Clarence thought they'd probably work around this one when they came back with another package and more information. They didn't really want to say no, but they would like to have more information.

Mike summarized that as it stood, the conditional use was approved with conditions as stated. The variances were not approved and the Board expected a new package to be brought back to the staff and looked at again. Sue said it might or might not have variances attached, and they might be different variances. Mike agreed.

### **OTHER BUSINESS**

Joel talked about a legal decision. If the Board wanted, he offered to see if they could get the Attorneys Office to give an explanation or interpretation. Mike said that would be appreciated. Mike affirmed with staff that items had been submitted for next month. Lita reiterated that she appreciated the Board's comments and catches with the minutes. Mike thanked the staff for phenomenal staff reports. Even though sometimes the Board had a little bit of consternation with them, he thought they provided the Board with the kind of information they needed, a good, sound basis for making the kind of decisions that they're doing. Sue agreed. Mike thought they'd really improved over the last 4 years.

**Mike Marchetti, chair, adjourned the meeting at 6:10 pm.**